

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jennine Giordano	Team: Team # 3	CCRB Case #: 200612711	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 09/20/2006 6:15 PM	Location of Incident: § 87(2)(b)	Precinct: 71	18 Mo. SOL 3/20/2008	EO SOL 3/20/2008	
Date/Time CV Reported Thu, 09/21/2006 10:17 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/25/2006 4:09 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POM Zakee Smith	31658	932220	077 PCT
3. POM Averill Thompson	01055	932223	077 PCT
4. POM Edwin Espinal	09609	934831	077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Nicholas Salvitti	27629	926059	077 PCT
2. POF Ruth Fadl	21429	899686	077 PCT
3. POM Gennaro Santerelli	22855	907264	077 PCT
4. POM Hector Morales	30216	925774	077 PCT
5. POF Charlene Smith	29722	935762	077 PCT
6. SGT Peter Oneill	00000	919500	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Zakee Smith	Abuse: PO Zakee Smith facilitated the stop of § 87(2)(b)	
B.POM Edwin Espinal	Force: PO Edwin Espinal struck § 87(2)(b) with an asp.	
C. Officers	Force: Officers used physical force against § 87(2)(b)	
D. Officers	Force: Officers pointed their guns at individuals.	
E.POM Averill Thompson	Abuse: PO Averill Thompson refused to provide his name and shield number to § 87(2)(b)	
F.POM Edwin Espinal	Abuse: PO Edwin Espinal refused to provide his name and shield number to § 87(2)(b)	

Synopsis

§ 87(2)(b) filed this complaint with the Internal Affairs Bureau (IAB) Command Center on September 20, 2006 at approximately 7:30 p.m. regarding an incident that occurred the previous hour. § 87(2)(b) reported that at approximately 6:30 p.m., when she arrived home at § 87(2)(b) she observed numerous officers hitting her nephew, § 87(2)(b) § 87(2)(b) who was not present for the whole incident, also reported that her daughter informed her that officers ran into their home, threw § 87(2)(b) onto the floor and one of the officers placed his foot on § 87(2)(b)'s head. IAB log # 06-31101(encl. 4-4a) was generated and the case was referred to the Civilian Complaint Review Board (CCRB) on September 25, 2006. The investigation determined that Sgt. Peter Oneill, PO Zakee Smith, PO Ruth Fadl, PO Edwin Espinal, PO Charlene Smith, PO Averill Thompson, PO Hector Morales and PO Nicholas Salvitti, all members of the 77th Precinct, were conducting a SNEU operation on the above date. PO Zakee Smith observed § 87(2)(b) engage in a hand to hand drug transaction and conveyed his description over the radio (Allegation A). According to § 87(2)(b) at approximately 6:15 p.m., an officer identified from the investigation as PO Charlene Smith approached § 87(2)(b) asked him for identification and told him she would have to search him. An officer identified from the investigation as PO Espinal hit § 87(2)(b) with an asp across his entire back (Allegation B). PO Espinal and an unidentified tall white male officer, PO # 3, slammed § 87(2)(b) onto his face, stomped on him and dragged him into the vestibule of his house (Allegation C). § 87(2)(b) indicated that a large crowd formed in his driveway. PO Espinal, PO Thompson and PO # 3 allegedly drew and pointed their firearms at the members of the crowd as they instructed people to move away from the scene (Allegation D). § 87(2)(b) allegedly asked for PO Thompson's name and shield number at the scene and he did not provide her with his information (Allegation E). § 87(2)(b) allegedly requested PO Espinal's name and shield number at the scene and was told to by PO Espinal to obtain that information from IAB (Allegation F). § 87(2)(b) was transported to § 87(2)(b) from the precinct where he received medical attention for pain to his back, jaw and shoulder.

§ 87(2)(g)

§ 87(2)(b)

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This case was initially assigned to former investigator Damaris Vazquez on September 26, 2006. Upon her resignation, the case was reassigned to the undersigned investigator on November 5, 2007.

Summary of Complaint

§ 87(2)(b)

§ 87(2)(b)

Investigator Vazquez interviewed § 87(2)(b) at the CCRB on October 17, 2006 (encl. 6-6d). § 87(2)(b) was not present for the entire incident.

At approximately 6:15 p.m. on September 20, 2006, § 87(2)(b) arrived home from work and observed a large crowd of officers and civilians standing in her driveway. § 87(2)(b) observed § 87(2)(b) handcuffed and laying face down on the front steps of her home. § 87(2)(b) observed a black female officer with dreads, PO # 1, a white male officer, PO # 2, and a tall black male officer with short hair, PO # 3, surrounding § 87(2)(b). PO # 1, PO # 2 and PO # 3 were identified from their descriptions as PO Charlene Smith, PO Espinal and PO Thompson, respectively. PO Charlene Smith had her

foot on § 87(2)(b)'s head. PO Espinal lifted § 87(2)(b) to his feet and escorted him to the marked van. As PO Espinal escorted § 87(2)(b) to the van, he pushed § 87(2)(b) on his back and shoulders. PO Espinal then pushed § 87(2)(b) into the van, causing him to slip on one of the steps and then pushed § 87(2)(b) again to get him in the van. Once § 87(2)(b) was situated in the van and PO Espinal was seated in the front passenger seat, he turned around and struck § 87(2)(b) across his head. From where she was standing, § 87(2)(b) was unable to determine whether PO Espinal struck § 87(2)(b) with his hand or an object. At some point § 87(2)(b) asked PO Thompson, who was identified from the physical description § 87(2)(b) provided, for his name and badge number but he did not provide her with this information.

Results of Investigation

Victim

§ 87(2)(b) was transported from the 77th Precinct to § 87(2)(b) in an ambulance. According to the ambulance call report, § 87(2)(b) stated, "the police beat me up." According to the § 87(2)(b) medical records § 87(2)(b) reported to doctors that he was assaulted multiple times with nightsticks by the police and as a result had pain in his neck, back and arm (encl. 7-7e).

§ 87(2)(b)

§ 87(2)(b)

As a result, Investigator Vazquez interviewed § 87(2)(b) over the phone on January 3, 2007 (encl. 7f-7j). § 87(2)(b) returned a signed verification form to the CCRB but never provided a notarized, written statement.

At approximately 6:15 p.m. on September 20, 2006, § 87(2)(b) and approximately fifteen of his friends were in front of his house located at § 87(2)(b) playing basketball. § 87(2)(b) was wearing a gray Roca Wear shirt, dark blue jeans and a Yankee baseball cap. § 87(2)(b) walked alone to the Chinese restaurant located at the corner of his block prior to the subsequent incident but did not make any stops between his house and the restaurant. When § 87(2)(b) arrived home, he observed a marked NYPD van and an unmarked vehicle cut in front of an unidentified female's vehicle directly in front of his home. PO # 1, a black female officer who was subsequently identified as PO Charlene Smith along with PO # 2 a white male officer, exited an unmarked vehicle. PO # 3, a Hispanic male who was subsequently identified as PO Espinal, PO # 4, a tall white male and PO # 5, a white male who identified himself as a sergeant and who was identified from the investigation as Sgt. Oneill, exited a marked NYPD van. PO Charlene Smith approached § 87(2)(b) and asked him for his identification. § 87(2)(b) did not have identification and informed PO Charlene Smith that he lived at § 87(2)(b). PO Charlene Smith informed § 87(2)(b) that she needed to search him. PO Espinal approached § 87(2)(b) and hit him with the expandable baton or asp across his entire back. PO # 4 slammed § 87(2)(b) on his face and he and PO Espinal "stomped" on § 87(2)(b)'s body. PO Espinal and PO # 4 dragged § 87(2)(b) into the vestibule of his house, which is located off of the driveway and continued to hit him for ten minutes. PO Espinal and PO # 4 kicked § 87(2)(b) on his back and subsequently handcuffed him inside of the vestibule area. When § 87(2)(b) was removed from the vestibule, additional officers arrived at the scene. PO # 6, a slim black male officer who was identified from the investigation as PO Thompson, searched him and stated that he found marijuana. § 87(2)(b) denied possessing marijuana. § 87(2)(b) stated that a crowd had formed in his driveway and PO Espinal, PO # 4 and PO Thompson, with their guns drawn and pointed, instructed the crowd to move away from the driveway. § 87(2)(b) confirmed that none of the officers used any force against him in the van or while he was being placed into the van. § 87(2)(b) was taken to the 77th Precinct stationhouse where he requested medical attention because his back, jaw and shoulder were hurting. § 87(2)(b) was then transported to § 87(2)(b). At some point § 87(2)(b) asked PO Espinal, who was identified by § 87(2)(b) as the same officer who hit him with the asp, for his name and badge number but he told him to obtain it from IAB.

On December 18, 2007 and December 19, 2007 additional attempts were made to contact § 87(2)(b) in order to find out further physical descriptions for the officers who used physical force against him and to obtain a further description of the shirt he was wearing in his arrest photograph. As of the time this report was written, § 87(2)(b) has not contacted the CCRB (encl. 20-20n).

Arrest Photograph

§ 87(2)(b)'s arrest photograph does not display any visible injuries on his face or neck. There are red spots on § 87(2)(b)'s shirt, however, it remains unclear if this is part of his shirt design or blood (encl. 7j).

Photos of Incident Location

During his CCRB statement, § 87(2)(b) clarified that the main entrance to his house is via the driveway. During a canvass to § 87(2)(b) on February 20, 2007, Investigator Vazquez photographed the location (encl. 3-3a).

Witnesses and Results of Canvass

§ 87(2)(b) stated that his friends, § 87(2)(b) and his family members § 87(2)(b) and § 87(2)(b) might have witnessed the incident. § 87(2)(b) provided addresses for § 87(2)(b) and § 87(2)(b) and confirmed that § 87(2)(b) and § 87(2)(b) also reside at § 87(2)(b). On November 22, 2006, first please call letters were mailed to the above individuals. On January 22, 2007, final please call certified letters were mailed to the above individuals. On February 1, 2007, Investigator Vazquez received confirmation that the above individuals received the letters. In addition to taking photographs, during her field trip to § 87(2)(b) Investigator Vazquez attempted to interview witnesses at § 87(2)(b) as well as the house across the street at § 87(2)(b). However, there was no answer and please call letters were left at both residences. Additionally, on May 5, 2007, a please call letter was mailed to another potential witness, § 87(2)(b) who was identified from the investigation as the female who was arrested in front of § 87(2)(b)'s residence (encl. 20-20n). As of the date this report was completed, the above individuals have not contacted the CCRB. § 87(2)(g)

Identification of Officers Interviewed

PO Zakee Smith is listed as § 87(2)(b)'s arresting officer and PO Charlene Smith and PO Espinal prepared supporting depositions for the case. Furthermore, the 77th Precinct tour 3 roll call for September 20, 2006 confirms that the above officers in addition to PO Fadl, PO Thompson, PO Morales and PO Salvitti were assigned to the SNEU team, which was supervised by Sgt. Oneill.

Officer Statements

PO Zakee Smith

PO Zakee Smith prepared the complaint report, arrest report and the misdemeanor narcotics possession fact sheet. The narrative in the complaint and arrest report indicates that PO Zakee Smith observed § 87(2)(b) conduct a hand to hand drug transaction and upon attempting to apprehend § 87(2)(b) he refused to be handcuffed and fled westbound towards § 87(2)(b). When § 87(2)(b) was finally apprehended a quantity of marijuana was recovered. The misdemeanor narcotics possession fact sheet specified that two ziplock bags of marijuana were recovered from § 87(2)(b)'s pants pocket (encl. 9-9d).

CCRB Statement

PO Zakee Smith is a § 87(2)(b)-old black male who is 5 feet 9 inches tall, 155 pounds with black hair and brown eyes. He has 4-years tenure with the NYPD. Investigator Vazquez interviewed PO Zakee Smith at the CCRB on June 13, 2007 (encl. 9I-9j). On September 20, 2006, PO Zakee Smith worked from 2:00 p.m. until 10:35 p.m. with PO Ruth Fadl as observation posts during a SNEU operation. Both were dressed in plainclothes

and standing on top of a roof at a building located on the corner of Franklin Avenue and Lincoln Place to observe drug transactions. PO Zakee Smith had the following memo book entry regarding the incident. ***At 2:30 p.m., PO Zakee Smith set up his observation post with PO Fadl (encl. 9e-9g).***

On September 20, 2006 at approximately 6:15 p.m., PO Fadl observed a female engage in a hand to hand drug transaction and PO Zakee Smith overheard her radio a physical description to the rest of the SNEU team. PO Fadl indicated that the female entered a vehicle and headed southbound on Franklin Avenue. PO Zakee Smith did not observe the female, however, several seconds later PO Zakee Smith, using binoculars, observed a male, subsequently identified as § 87(2)(b) engage in a unrelated hand to hand drug transaction. PO Zakee Smith observed § 87(2)(b) accept a small object that contained a green leafy substance, which from his experience appeared to be marijuana. PO Zakee Smith observed § 87(2)(b) purchase the green leafy substance in exchange for an unspecified sum of U.S. currency. PO Fadl never observed § 87(2)(b) engage in the drug transaction because it happened around the same time that she made the observation of the female. Immediately, PO Zakee Smith provided a description for § 87(2)(b) over the point to point radio and specified that § 87(2)(b) was walking southbound on Franklin Avenue. PO Zakee Smith heard over the radio that PO Espinal and PO Charlene Smith apprehended the unidentified female on Union Street. After the female was apprehended, PO Zakee Smith overheard a call for assistance being placed over the radio. PO Zakee Smith estimated that he heard this radio transmission less than a minute after he provided the description of § 87(2)(b). PO Zakee Smith did not know the circumstances that led up to the call for assistance and did not know whether § 87(2)(b) was apprehended. PO Zakee Smith confirmed that since the call for assistance was placed shortly after he provided § 87(2)(b)'s description, he never had a chance to provide a description for the seller. PO Zakee Smith and PO Fadl left the rooftop and waited in front of the building to be picked up. Shortly after, an unidentified unit arrived and transported them directly to the stationhouse where PO Zakee Smith made a confirmatory identification of § 87(2)(b). PO Zakee Smith did not observe any injuries on § 87(2)(b). Because of his assignment on the observation post, PO Zakee Smith did not have any verbal or physical interaction with § 87(2)(b) at the scene or the precinct.

PO Ruth Fadl

PO Fadl is a § 87(2)(b)-old Hispanic female who is 5 feet 5 inches tall, 170 pounds with brown hair and brown eyes. She has 16-years tenure with the NYPD. Investigator Vazquez interviewed PO Fadl at the CCRB on June 12, 2007 (encl. 10d-10e). On September 20, 2006, PO Fadl worked from the same tour and assignment as PO Zakee Smith. PO Fadl could not recall the exact building number of where she was making observations. PO Fadl had the following memo book entry regarding the incident. ***From 5:10 p.m. to 6:40 p.m., observation post set up on Franklin Avenue and Lincoln Place (encl. 10a-10c).*** PO Fadl's statement was extremely consistent with PO Zakee Smith's statement. PO Fadl, however, indicated that she did not hear the details of the radio transmission that PO Zakee Smith placed in regards to § 87(2)(b) and confirmed that PO Charlene Smith was the officer who called for assistance.

PO Charlene Smith

PO Charlene Smith prepared supporting depositions in regards to this incident and specified that she observed § 87(2)(b) holding two ziplock bags of marijuana in his right hand after an exchange took place with an unidentified individual (encl. 11-11a).

CCRB Statement

PO Charlene Smith is a § 87(2)(b)-old Black female who is 5 feet 9 inches tall, 215 pounds with black hair and brown eyes. She has 3-years tenure with the NYPD. Investigator Vazquez interviewed PO Charlene Smith at the CCRB on July 26, 2007 (encl. 11d-11f). On September 20, 2006, PO Charlene Smith worked from 2:00 p.m. until 10:35 p.m. and was to the apprehension team during a SNEU operation with PO Espinal. They were assigned to a marked patrol vehicle. PO Charlene Smith had the following memo book entries regarding the incident. ***At 6:35 p.m., while conducting SNEU operation, PO Smith, Zakee observed § 87(2)(b) in a hand-to-hand transaction on the eastside corner of Franklin Avenue and***

Union Street. When I approached § 87(2)(b) he fled westbound on Union Street. I called for assistance and units responded. § 87(2)(b) was placed under arrest in front of § 87(2)(b) and marijuana was recovered from him (encl. 11b-11c).

At approximately 6:15 PM on September 20, 2006, PO Charlene Smith was assisting another apprehension vehicle with the arrest of a female suspect. PO Charlene Smith heard a radio transmission being transmitted from PO Zakee Smith at which time he described a light-skinned black male that was wearing a gray T-shirt and a black baseball cap and who was subsequently identified as § 87(2)(b). PO Zakee Smith specified that § 87(2)(b) engaged in a drug sale and also provided his direction of flight, which was headed towards PO Charlene Smith and PO Espinal. Several seconds later, PO Charlene Smith observed a male, who was several feet away from her and who fit the physical description provided by PO Zakee Smith. PO Espinal was placing the female perpetrator into the van when PO Charlene Smith observed § 87(2)(b) pass a small plastic bag containing a brown leafy substance to an unidentified male. Based on her training and experience, PO Charlene Smith believed this substance to be about \$10 worth of marijuana. PO Charlene Smith confirmed that she actually observed § 87(2)(b) engage in separate drug transaction than from what PO Zakee Smith initially observed. PO Charlene Smith made eye contact with § 87(2)(b). § 87(2)(b) identified herself as a police officer and gestured with her hand for him to walk towards her. As PO Charlene Smith walked closer to § 87(2)(b) he took flight on foot eastbound on Union Street. The other unidentified individual who was involved in the drug sale with § 87(2)(b) also took flight and was never apprehended. PO Charlene Smith called for assistance and ran after § 87(2)(b). PO Espinal also pursued § 87(2)(b) and surpassed PO Charlene Smith. For an unspecified amount of time, PO Charlene Smith lost sight of § 87(2)(b) and PO Espinal as they ran around a block. When PO Charlene Smith arrived at the arrest location or § 87(2)(b) she observed § 87(2)(b) handcuffed and lying face down on the ground. PO Espinal was holding § 87(2)(b) on the ground with his hands on § 87(2)(b)'s arms. PO Espinal was kneeling down next to § 87(2)(b). PO Charlene Smith never observed PO Espinal remove or hold an asp in his hand and she never observed PO Espinal strike § 87(2)(b) with any objects. Since § 87(2)(b) was already handcuffed he was not resisting. PO Charlene Smith never observed PO Espinal step on § 87(2)(b)'s head or kick him on his body. PO Charlene Smith recalled that there were many units at the scene as a large crowd had gathered at the location. PO Charlene Smith monitored crowd control but she did not recall anyone attempting to physically interfere in § 87(2)(b)'s arrest. She could not recall which officers arrived prior to or after her arrival at the arrest location. PO Charlene Smith never observed any officers remove or point their firearms at members of the crowd. PO Charlene Smith never overheard any of the civilians, particularly § 87(2)(b) or § 87(2)(b), request officers' names and shield numbers. PO Charlene Smith never observed any injuries on § 87(2)(b).

PO Edwin Espinal

PO Espinal prepared supporting depositions in regards to this incident and specified that § 87(2)(b) attempted to prevent him from effecting the arrest by flailing his arms (encl. 12-12a).

CCRB Statement

PO Espinal is a § 87(2)(b)-old Hispanic male with brown hair. He has 3-years tenure with the NYPD. Investigator Vazquez interviewed PO Espinal at the CCRB on June 12, 2007 (encl. 12e-12f). On September 20, 2006, PO Espinal worked the same tour and assignment as PO Charlene Smith. PO Espinal also indicated that PO Morales worked with them. PO Espinal did not have entries in his memo book regarding this incident (encl. 12c-12d).

On September 20, 2006 at approximately 6:15 p.m., PO Espinal and PO Morales had driven away from the location of where they processed an unrelated arrest when they overheard another description being placed over the radio and then PO Charlene Smith instructed them to respond back to the location. Since PO Espinal was only a half a block away, he exited the vehicle and walked back towards PO Charlene Smith. PO

Espinal could not recall who remained with the female perpetrator in the van. When PO Espinal reached PO Charlene Smith, she pointed at § 87(2)(b) and the direction in which he took flight. PO Espinal ran after § 87(2)(b) and after a block, apprehended him as he entered the vestibule area of § 87(2)(b). § 87(2)(b)'s head was in the vestibule area and his legs were outside of the door. § 87(2)(b) flailed his arms, kicked his legs and pushed PO Espinal away. When PO Espinal attempted to grab § 87(2)(b)'s arms to handcuff them, § 87(2)(b) repeatedly pulled away and refused to be handcuffed. § 87(2)(b) repeatedly reached for the area surrounding his waistband. PO Espinal issued several verbal commands but § 87(2)(b) refused to comply. PO Espinal removed his asp and struck § 87(2)(b) once or twice. PO Espinal could not recall exactly where he struck § 87(2)(b) with the asp but explained that he usually aims for meaty/ fleshy areas when striking an individual with an asp. PO Espinal did not observe any bruising or bleeding on § 87(2)(b) subsequent to being struck with the asp. PO Espinal never stomped on § 87(2)(b)'s head or kicked him on his body. PO Espinal did not recall any other officers using physical force against § 87(2)(b). Additional officers, of whom he could not recall, arrived at the scene and assisted in handcuffing § 87(2)(b). PO Espinal explained that a large crowd, totaling thirty people, gathered around the officers. Neither PO Espinal nor any other officer at the location drew their firearms at the crowd. PO Espinal did not recall being asked for his name or shield number.

PO Averill Thompson

PO Thompson is a § 87(2)(b)-old black male who is 5 feet 11 inches tall, 190 pounds with black hair and brown eyes. PO Thompson has since resigned from the NYPD on November 1, 2007. Investigator Vazquez interviewed PO Thompson at the CCRB on June 12, 2007 (encl. 13c-13d). On September 20, 2006, PO Thompson worked from 2:00 p.m. until 10:35 p.m. on the SNEU team with PO Salvitti and another officer who he could not recall. PO Thompson was dressed in plainclothes and was the rear passenger in a marked patrol van. PO Salvitti was the operator of this vehicle. PO Thompson did not have any entries in his memo book regarding this incident (encl. 13a-13b).

On September 20, 2006 at approximately 6:15 p.m., PO Thompson was sitting in his van located on Classon Avenue and Union Street when he heard PO Charlene Smith call for assistance over the radio. PO Thompson exited the van and observed a crowd forming towards Franklin Avenue and he ran in the direction. When he arrived at the location, the crowd, which consisted of more than twenty individuals surrounded the alleyway of § 87(2)(b). PO Thompson observed § 87(2)(b) handcuffed and lying sideways on the ground. PO Thompson subsequently lifted § 87(2)(b) to his feet and searched him. PO Thompson confirmed that § 87(2)(b) had no weapons but did retrieve marijuana from the front part of § 87(2)(b)'s body, near his waist area. PO Thompson did not observe any bleeding or injuries on § 87(2)(b). PO Thompson escorted § 87(2)(b) to the van and helped him onto the back seat. PO Thompson affirmed that no physical force was used against § 87(2)(b) as it was not necessary since § 87(2)(b) was restrained and cooperative. Several members of the crowd cursed at the officers but for the most part they remained under control. Neither PO Thompson nor any other officer had to draw their firearm. PO Thompson did not recall being asked for his name and/or shield number as the situation was chaotic.

Sgt. Peter Oneill

Sgt. Oneill is a § 87(2)(b)-old white male who is 6 feet tall, 178 pounds with brown hair and hazels eyes. He has 10-years tenure with the NYPD and has since been promoted to a lieutenant and transferred to the 60th Precinct. The undersigned investigator interviewed Sgt. Oneill on November 30, 2007 (encl. 14b-14d). On September 20, 2006 Sgt. Oneill worked from 2:00 p.m. until 10:57 p.m. as the SNEU supervisor. He was dressed in plainclothes and assigned to a marked police van. Sgt. Oneill had the following memo book entries regarding the incident. ***At 5:10 p.m., set up on Franklin and Lincoln. At 6:36 p.m., two separate individuals were arrested, PO Charlene Smith observed one male black conduct in a hand to hand fled westbound onto Union to § 87(2)(b). Foot pursuit ensued and perpetrator was apprehended with a large crowd forming as a result. At 6:40 p.m., two perpetrators were transported in Sgt. Oneill's van to the 77th Precinct (encl. 14-14a).***

On September 20, 2006, at approximately 6:15 p.m., Sgt. Oneill and his operator, PO Nicholas Salvitti responded to the vicinity of Franklin Street and Lincoln Avenue to verify the arrest of a female perpetrator who was apprehended by PO Charlene Smith and PO Espinal. After verifying the arrest, Sgt. Oneill left the scene with the female prisoner. A couple of minutes later, PO Charlene Smith called him back to the scene and notified him that she observed a male, subsequently identified as § 87(2)(b) purchase narcotics. She then specified that § 87(2)(b) ran westbound on Union Street. Sgt. Oneill ran in that direction and observed two unidentified officers run up the driveway of § 87(2)(b). When Sgt. Oneill reached the driveway, he noticed the side entrance of the private house was open and observed PO Thompson and PO Espinal inside of the vestibule area with § 87(2)(b). Since the vestibule area was extremely small, Sgt. Oneill stood in the doorway. There were several children and women in the house that were screaming so Sgt. Oneill instructed PO Espinal and PO Thompson to remove § 87(2)(b) from the house. PO Espinal and PO Thompson pulled § 87(2)(b) who was still standing, out of the vestibule area of the house. § 87(2)(b) attempted to pull away from the officers so PO Espinal and PO Thompson pushed him to the ground on the driveway in order to restrain him. PO Espinal and PO Thompson handcuffed § 87(2)(b) on the ground. PO Espinal and PO Thompson never stomped on § 87(2)(b)'s head, hit him with an asp, dragged him across the ground or kicked him. When Sgt. Oneill looked up he noticed approximately a hundred individuals as additional officers were arriving on the scene. Sgt. Oneill instructed several individuals to move back, however, he never removed his firearm or pointed it at the crowd and he never observed any officers do this. A female, who did not identify herself, was standing ten feet away from Sgt. Oneill and was screaming out loud, "I want names," however, she did not direct it towards any specific officers. Sgt. Oneill and PO Salvitti, who eventually responded to the scene, transported § 87(2)(b) to the precinct in the van. Sgt. Oneill did not observe any injuries on § 87(2)(b) and he never complained of any injuries.

PO Hector Morales and PO Nicholas Salvitti

PO Morales is a § 87(2)(b)-old Hispanic male who is 5 feet 8 inches tall, 180 pounds with brown hair and brown eyes. He has 7-years tenure with the NYPD. PO Nicholas Salvitti is a § 87(2)(b)-old white male who is 6 feet 1 inch tall, 212 pounds with blonde hair and blue eyes. Investigator Vazquez interviewed PO Morales and PO Salvitti at the CCRB on June 5, 2007 and October 9, 2007, respectively (encl. 15b-15c & 15h-15l). On September 20, 2006, PO Morales worked the same tour and assignment as PO Charlene Smith and PO Espinal. PO Salvitti also worked the same tour but was assigned to work directly with Sgt. Oneill. PO Salvitti could not recall what type of vehicle he was assigned too. PO Morales and PO Salvitti did not have any memo book entries regarding this incident (encl. 15a & 15e-15g).

On September 20, 2006 at approximately 6:15 p.m., PO Morales and his partners had just completed an arrest of a female who was observed conducting in a drug sale. PO Morales stood outside of the prisoner van, which was located on Franklin Street and Union Street. PO Morales overheard a call for assistance being placed over the radio and observed a crowd gather. PO Morales, however, never left the prisoner van. Although PO Morales only stood approximately thirty feet away from where the crowd had gathered, the crowd of people prevented PO Morales from observing what was occurring. Eventually, PO Morales transported only the unidentified female to the stationhouse. Similar to PO Morales, PO Salvitti also overheard a call for assistance placed by a member of his SNEU team. When PO Salvitti arrived at the location, § 87(2)(b) had already been transported to the precinct. PO Salvitti did not interact with § 87(2)(b) at the precinct and therefore could not determine if he suffered any bruising or injuries.

Officers Not Interviewed

Although the roll call shows that PO Gennaro Santerelli was working and assigned to the SNEU team, according to his memo book entry, he took an emergency day on September 20, 2006 (encl. 16a-16b). Therefore, PO Santerelli was not interviewed.

Medical Documents

According to the ambulance call report, § 87(2)(b) was not bleeding during the transport to the hospital and did not have any visible injuries. § 87(2)(b) arrived at § 87(2)(b) at 8:30 p.m. He complained of moderate pain to his neck, back and right elbow. At 1:00 a.m., § 87(2)(b) was diagnosed with a small abrasion on his right forearm. However, he did not have any deformities or significant swelling to his forearms. Furthermore, the x-rays did not show any abnormalities or fractures. § 87(2)(b) was prescribed Motrin for his pain (encl. 17-17h).

Police Department Documents

Command Log, Prisoner Holding Pen Roster and Roll Call (encl. 18-18c)

The command log confirms that Sgt. Oneill was present with SNEU team # 2 to conduct a SNEU operation in RMP's # § 87(2)(b), # § 87(2)(b) and # § 87(2)(b). The command log and prisoner holding pen roster note that § 87(2)(b) arrived at the 77th Precinct at 7:00 p.m. § 87(2)(b) whose arresting officer was also PO Zakee Smith, was also brought to the precinct at the same time. According to the command log, § 87(2)(b)'s physical appearance appeared normal but he complained of pain. § 87(2)(b) was transported to § 87(2)(b) at 8:15 p.m. in an ambulance and returned to the precinct at 1:00 a.m. The roll call confirms that all of the officers who were interviewed were on duty when the incident occurred.

Police Officer CCRB History

PO Zakee Smith, PO Espinal and PO Thompson do not have any prior substantiated CCRB allegations (encl. 2-2c).

Complainant CCRB History

§ 87(2)(b) has not filed any prior CCRB complaints. § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Disposition of Criminal Case

Pursuant to this arrest on September 20, 2006, § 87(2)(b) pleaded guilty to criminal possession of marijuana and was sentenced to thirty days in prison (encl. 19-19q).

Civilian Criminal Conviction History

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Conclusions and Recommendations

Identification of Subject Officers

PO Zakee Smith acknowledged his role as the observation post during the operation and it was determined that the stop of § 87(2)(b) was predicated on the information PO Zakee Smith provided to the field team. § 87(2)(g) PO Espinal admitted to hitting § 87(2)(b) with his asp, § 87(2)(g). Although PO Espinal testified that he was the only officer who physically interacted with § 87(2)(b), § 87(2)(b) indicated that more than one officer apprehended him and Sgt. Oneill corroborated this. § 87(2)(g)

§ 87(2)(b) also testified that at least three officers drew and pointed their firearms at the crowd, § 87(2)(g)

§ 87(2)(b) and § 87(2)(b)'s description of the officers who refused to provide them with their name and shield information matched that of PO Thompson and PO Espinal, § 87(2)(g)

Undisputed Facts

It is undisputed that PO Zakee Smith observed § 87(2)(b) engage in a drug sale, radioed this information to his SNEU team as well as § 87(2)(b)'s physical description and direction of flight. It is undisputed that PO Charlene Smith approached § 87(2)(b) as a result of the above radio transmission. It is undisputed that PO Charlene Smith called for assistance after § 87(2)(b) fled the scene. It is undisputed that PO Espinal struck § 87(2)(b) with his asp. It is undisputed that physical force was used against § 87(2)(b) in order to apprehend him. It is undisputed that § 87(2)(b) was apprehended inside of the vestibule of his home. It is undisputed that PO Thompson recovered marijuana from § 87(2)(b). It is undisputed that a large crowd formed around § 87(2)(b). It is undisputed that § 87(2)(b) did not have any visible injuries after his arrest. It is undisputed that § 87(2)(b) was transported to § 87(2)(b) where he complained of pain to his neck, back and arm.

Disputed Facts

The manner in which PO Charlene Smith stopped § 87(2)(b) and whether he fled the scene remains disputed. The amount of times PO Espinal hit § 87(2)(b) with the asp remains disputed. It is disputed whether § 87(2)(b) physically resisted arrest. It is disputed whether officers slammed § 87(2)(b) on his face, stomped on his body, kicked him or dragged him across the ground. It is disputed whether any officers drew and pointed their firearms at the crowd. It is disputed whether § 87(2)(b) and § 87(2)(b) directly requested PO Thompson and PO Espinal's identification.

Credibility Analysis

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(b) reported that PO Charlene Smith put her foot on § 87(2)(b)'s head and that PO Espinal pushed § 87(2)(b) into the prisoner van and struck him in the head, however, § 87(2)(b) did not make these allegations during his CCRB statement, § 87(2)(g).

██████████ Lastly, § 87(2)(b) alleged that her § 87(2)(b)-old granddaughter, § 87(2)(b) was hit in the head when an officer pushed the front door open.

§ 87(2)(g)

PO Zakee Smith testified that he observed § 87(2)(b) engage in a drug transaction with the help of a visual aid, which he described as binoculars. PO Zakee Smith was detailed in his description of exactly what was exchanged between § 87(2)(b) and the unapprehended seller. § 87(2)(g)

Zakee Smith placed a description of § 87(2)(b) over the radio- a signal to the team that PO Zakee Smith had probable cause to arrest § 87(2)(b) and for the team to move in and effect the arrest. § 87(2)(b)

§ 87(2)(g)

According to *Kamins Search and Seizure Guidelines*, An officer may forcibly detain an individual to question him/her as long as they have a reasonable suspicion that criminal activity is afoot. The United States Supreme Court has held that a police officer must have a particularized and objective basis for suspecting a particularized person of a criminal activity (encl. 1-1b). § 87(2)(g)

§ 87(2)(b) alleged that he was hit across his entire back with an expandable baton or an asp and he reported to the doctors at § 87(2)(b) that he was hit multiple times with nightsticks. PO Espinal acknowledged the fact that he hit § 87(2)(b) with his asp but confirmed that it was only done once or twice. Although PO Espinal could not recall where he hit § 87(2)(b) with the asp, he explained that he issued § 87(2)(b) several verbal commands to which he did not comply. § 87(2)(g)

The Police Student's Guide states that *Impact techniques may be used to protect officers against assault. In some cases, aggressive subjects may close the distance between officers and themselves before officers have an opportunity to use their OC spray. In such cases, impact techniques must be employed* (encl. 1e-1j). § 87(2)(g)

§ 87(2)(b) alleged that two officers, including PO Espinal, slammed his face onto the ground, stomped on his body, dragged him across the floor and kicked him on his back. It is evident that since a call for

[REDACTED]

It is undisputed that a large crowd formed around § 87(2)(b) during § 87(2)(b)'s arrest. Although PO Charlene Smith, PO Espinal and Sgt. Smith indicated that individuals in the crowd were loud and cursed, they confirmed that no one physically interfered in § 87(2)(b)'s arrest. § 87(2)(g)

§ 87(2)(b) Although § 87(2)(b) alleged that at least three officers pointed their firearms at members of the crowd, § 87(2)(b) who was present for this part of the incident, never alleged that this occurred. Furthermore, all of the officers corroborate that they never removed or pointed their firearm at the crowd. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Date:

Reviewed by:

Date:

Reviewed by:

Date